REMARKS

Applicants acknowledge with appreciation the withdrawal of the finality of the office action of November 22, 2000. Applicants also appreciate the withdrawal of all previous grounds of rejection. Claims 1 and 6 have been rewritten according to the suggestions provided by the Examiner. It will be understood that claims 1 and 6 have not been amended for reasons related to the statutory requirements for a patent and their scope has not been narrowed by this amendment. Rather, as set forth by the Examiner, the amendments to claims 1 and 6 are submitted to improve the language of the claims. No new matter has been added. Claims 1 and 6 as amended are included herewith in Appendix A. Claims 1-4, 6 and 8-9 are now pending in the application.

Claims 1-4, 6 and 8-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Greenspan et al., U.S. Patent No. 5,834,008 in view of Litkowski et al., U.S. Patent No. 6,086,374. Applicants respectfully traverse this rejection.

U.S. Patent No. 5,834,008 issued November 10, 1998. The present application was filed February 23, 1998. Since the '008 patent issued after the filing date of the present application, the '008 patent can only be prior art under 35 U.S.C. § 102(e) (the other sections do not apply). However, according to 35 U.S.C. § 103(c), "subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 35 U.S.C. § 102(b) of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

This section of the patent statute applies to all applications filed after November 29, 1999. *P.L. 106-113 § 4807(b)*. In the present case, a continued prosecution application under 37 C.F.R. § 1.53(d) was filed January 19, 2000, after the effective date of the statute. Thus, the statute applies to this application. Moreover, the '008 patent and the present application are both assigned to U.S. Biomaterials Corp. Thus, the patentability of the present invention is not

precluded by the '008 patent. In view thereof, Applicants respectfully request that this rejection be withdrawn.

Claims 1-4, 6 and 8-9 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9-12 of the '008 patent in view of Litkowski et al. Applicants respectfully traverse this rejection.

The present invention concerns a novel method for treating inflammation. Claim 1 defines a method of treating inflammatory symptoms related to skin disorders, other than wounds, in a mammal. The term "skin disorder" is defined in the specification as meaning abnormalities, other than wounds, of the skin which have induced a state of inflammation. Such disorders include, but are not limited to warts acme, dermatitis, hives, psoriasis, rashes, contact allergic reactions, and reactions to insect stings, and bites. *Specification, page 3, lines 18-21.* The term "wound" also is defined in the specification as meaning an injury wherein the integrity of patient's skin has been breached, as in the case of a cut or puncture, or where the skin has been destroyed by a chemical or thermal burn. *Specification, page 3, lines 23-25.*

Thus, the present invention is directed to a method for treating inflammation related to skin disorders other than wounds. This is clear from the language of the claims. As pointed out on page 2 of the specification which refers to the application from which the '008 patent issued, the composition of the '008 patent is taught to be useful for promoting healing wounds and improving the structure and appearance of scar tissue as the wounds heal. However there is no teaching that the composition could be used to reduce the symptoms of inflammation arising from skin disorders other than wounds such as allergic reactions and rashes. *Specification, page 2, line 29 - page 3, line 4.* Specifically, claim 9 of the '008 patent is directed to a method for treating wounds and burns comprising contacting a wound with an effective wound healing amount of particulate bioactive glass and topical antibiotic thereby providing for a release of sodium in the wound. Claim 10 is directed to a method for grafting skin comprising applying an effective, non-interconnected particulate bioactive glass to a graft

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of skin and then placing the graft. Claim 12 is further directed to a method for the healing of wounds or burns comprising contacting a wound or burn with an effective wound or burn healing amount of a particulate bioactive glass thereby providing for a release of sodium in the wound. None of these claims teaches the method of the claimed invention for treating inflammation arising from skin disorders other than wounds.

The Office Action states that the skin conditions disclosed by the '008 patent such as burns and skin graft sites read on Applicants' claim scope. Applicants disagree since the claims of the invention state that the inflammation treated is other than wounds and "wound" is defined in the specification as not including burns. In view of the definitions in the specification and the language of the claims, the present application defines a treatment not taught by the '008 patent. The addition of Litkowski et al. does not remedy this defect. In view thereof, Applicants respectfully request that this rejection be withdrawn.

Applicants believe they have responded to all matters raised in the above referenced Office Action and that the application is now in condition for allowance. If the Examiner has any questions concerning this Application or this Reply and Amendment, he is invited to contact the undersigned.

Respectfully submitted,

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